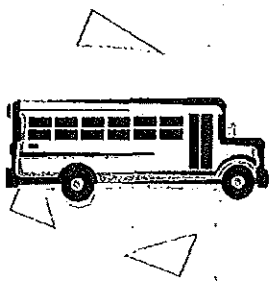

StopTeacherStrikes, Inc.

A non-profit organization dedicated to ending teacher strikes
668 Stony Hill Rd #298
Yardley, PA 19067
Tel (215) 586-3573
Fax (215) 701-1640
scampbell@stopteacherstrikes.org

Terry Mutchler
Executive Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor,
Harrisburg, PA 17120-0225

May 9, 2010

Re: Advisory Opinion Request Regarding Political Committee Contributions

Dear Terry,

On January 20, 2010 the chief counsel for the PSEA teacher labor union, Lynne Wilson, requested an advisory opinion of the Office of Open Records (OOR) that was declined.

As you may know, non-union public school employees (so-called "fair share fee payers") routinely and voluntarily associate with StopTeacherStrikes, Inc. for the purpose of challenging their compulsory, forced, and unwanted association with PSEA. Ms. Wilson, in her own request for an advisory opinion, purports to care about the non-association privacy rights of such employees which is ironic given that PSEA supports their forced association with PSEA. Certainly, PSEA lacks *standing* to obtain any legal decision with respect to non-union employees given that PSEA only has monopoly representation rights over non-union employees pertaining to collective bargaining and contract administration issues under Act 195 and Act 88.

Although you found Ms. Wilson's logic to be "well reasoned" I found it opportunistic and disingenuous. Pursuant to the constitutional mandate of Hudson v. Teachers, 475 U.S. 292 (1986) and the statutory mandate of 71 P.S. § 575(d), PSEA is required to send all forced union dues victims (so-called "fair share fee payers") in Pennsylvania an "annual notice". To meet this legal requirement PSEA local affiliates collect the home addresses of the forced association employees from local school districts and send it to PSEA headquarters in Harrisburg where a database of the *names* and *home addresses* of the affected non-union public school employees, i.e. individuals who want absolutely nothing to do with PSEA, is kept stored.

Ms. Wilson's request for an advisory opinion had little to do with any privacy concern about the non-association rights of non-union employees. It had to do with seeking OOR assistance to keep it's 'obtained via coercion' Hudson database proprietary. Put another way, PSEA believes

it should have a right not merely to force its unwanted association onto individuals, but also a right to collect and store their names and home addresses in a proprietary database that nobody else can access. PSEA's request seeks to infringe upon the constitutional rights of *non-union* public school employees to *voluntarily* associate with each other and their advocates.

Although Ms. Wilson's request for an advisory opinion was declined I am hoping that mine will be granted. I say this, because I wish to avoid the needless strain on governmental resources regarding what I consider to be an erroneous ruling from the OOR in the matter of Campbell v. Pocono Mountain School District; AP 2009-0766.

I contend that the OOR erred in finding a constitutional privacy right of school employees to associate with a political committee in Campbell v. Pocono Mountain School District; AP 2009-0766. If such a constitutional right existed then campaign finance reporting laws all across the U.S. would be unconstitutional. Furthermore, there is an implication inside AP 2009-0766 that public school employees enjoy a special constitutional privacy right to associate with a political committee that other types of public employees do not enjoy.

I urge the OOR to reconsider its ruling and rationale in Campbell v. Pocono Mountain School District; AP 2009-0766. I make this request not merely because I disagree that Shelton v. Tucker, 364 U.S. 479 (1960) can be applied to associating with a political committee that is governed by campaign finance reporting law but also because I contend the OOR issued an unenforceable Final Determination. There is something that OOR overlooked.

Generically speaking (i.e. without considering any employee's associations or beliefs) a requester can obtain the names of all employees who work for a governmental agency. 65 P.S. § 67.708(b)(6)(ii). Once a requester has a list of the names of all employees that requester could send individual Right-to-Know requests for more specific information about each employee.

Example: Suppose two hypothetical employees called Lynne Disingenuous and Chuck Confused are identified as working for a school district. As a requester I could submit one Right-to-Know request for "a copy of the political committee payroll deduction for employee Lynne Disingenuous showing the amount of her contribution." Then I could make a second, and separate, Right-to-Know request for "a copy of the political committee payroll deduction for employee Chuck Confused showing the amount of his contribution." Let's suppose that Lynne Disingenuous did not have a political contribution deducted from her paycheck. But, in the second and separate request, Chuck Confused ***did*** have a political contribution deducted from his paycheck. An irreconcilable dilemma would have presented itself re: AP 2009-0766.

Given the OOR's ruling in Campbell v. Pocono Mountain School District, AP 2009-0766, I am seeking an advisory opinion on what a governmental agency is supposed to do when it receives a Right-to-Know request that identifies the name of the employee whose political contribution is being sought. My wish is to avoid making several hundred individual Right-to-Know requests of a school district because this would be burdensome. Yet, absent an advisory opinion this would the only course of action available to get an answer to the following important legal questions:

Questions:

1. In the aforementioned example, would the OOR expect the agency to redact the name of Chuck Confused so I wouldn't know who he was? (i.e. engage in nonsensical action).

2. If the OOR instead believes that the existence of a political contribution cannot be disclosed when the requester demonstrates knowledge of the individual employee's identity, then does this belief constitute a reversal of the OOR's decision Campbell v. Pocono Mountain School District; which found that the existence of a political contribution must be disclosed?

3. More broadly speaking, does the OOR believe that the public nature of an employee's name under 65 P.S. § 67.708(b)(6)(ii) can be overruled based upon whether or not the employee uses the payroll mechanism of government to influence the outcome of elections? Put another way: does the OOR believe that the public has a right to know who works for an agency only if that employee doesn't use the agency's payroll department for political purposes; whereas if that employee ***does*** use the agency's payroll department for political purposes then the public is not allowed to know whether or not that employee works for the agency? If so, how would this be enforceable?

My hope is that this request for an advisory opinion will be granted because the thought of a school district receiving several hundred individual Right-to-Know requests from me to get answers to these questions is sobering.

I concur with Lynne Wilson that there is an inconsistency between the OOR's Final Determinations in Campbell v. Berwick Area School District, 2009-0212 and Campbell v. Pocono Mountain School District, AP 2009-0766. However the solution is ***not*** to erect the Berlin Wall between PSEA's Hudson database and the general public merely because Pennsylvania has a compulsory unionism law. The solution is to amend Pocono Mountain.

Your clarification would be appreciated.

This request for an advisory opinion does ***not*** arise from an actual request sent to an agency by me, and I have no knowledge or information to suggest there is pending litigation regarding any of the issues raised in this advisory opinion request.

Very truly yours,

Simon Campbell
President, StopTeacherStrikes, Inc.

Brawley, Maryanne

From: Simon Campbell [scampbell@stopteacherstrikes.org]
Sent: Sunday, May 09, 2010 6:31 PM
To: DC, OpenRecords
Cc: stuart.knade@psba.org; emily.leader@psba.org
Attachments: AdvisoryOpinionRequest.pdf

Dear Ms. Mutchler,

Attached. I copy PSBA because:

a) The first thing a school district would do is call Stuart or Emily if I sent that school district 500 requests
b) I am a PSBA member myself these days, and am moving beyond PSBA's bizarre decision to side with PSEA on the home address issue

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Simon Campbell
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pennsylvania
OFFICE OF OPEN RECORDS

May 28, 2010

Simon Campbell
StopTeacherStrikes, Inc.
668 Stony Hill Road #298
Yardley, PA 19067

RE: Advisory Opinion Request Regarding Political Committee Contributions

Dear Mr. Campbell:

On May 10, 2010, the Office of Open Records received your request for an advisory opinion. In that request, you urge the OOR to reconsider and amend its holding in *Campbell v. Pocono Mountain School District*, OOR Dkt. 2009-0766.

Please be advised that the OOR has decided not to grant your request for an Advisory Opinion at this time.

We are declining the request for several reasons. First, the use of an advisory opinion to amend or seek reconsideration of a Final Determination is improper. There are other proper ways to challenge a Final Determination. A party may file a petition for reconsideration with the OOR. A party may also appeal the Final Determination to the appropriate court. The timeframes for pursuing such actions in the above named appeal have long expired. Finally, a party may file a new request with an agency and appeal any denial to the OOR and raise new arguments challenging the OOR's previous Final Determinations.

The second reason the OOR declines to issue an advisory opinions is the request seeks response to general legal questions without presenting sufficiently specific facts to which the law may be applied. You asked for an advisory opinion on what a governmental agency is supposed to do when it receives a Right-to-Know request that identifies the name of the employee whose political contribution is being sought. You stated that this was important in getting an answer to a number of important legal questions. The issues you raise are properly addressed within the RTKL appeal process that permits a full examination of all the facts surrounding a specific request or type of request. In addition, the process allows for the government agency to present its position on the retention of such information/records.

Lastly, the OOR must address your statement that you will file several hundred right-to-know requests if your request for an advisory opinion is denied. The law does not limit the number of requests a person can file, however, a requester should be cognizant of the

purpose behind this law rather than use this law to unnecessarily encumber local agencies. The OOR suggests initially limiting the number of requests made with a district in order to permit that district to respond in a timely and efficient manner. If the district denies the request(s), you would have the opportunity to address the related legal issues in appeals to the OOR.

Respectfully,

Nathanael J. Byerly
Chief Counsel

cc: File